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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	
	)	
Biennial Regulatory Review -- Amendment	)	
of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95,	)	**WT Docket 98-20**
97, and 101 of the Commission's Rules to	)	
Facilitate the Development and Use of the	)	
Universal Licensing System in the Wireless	)	
Telecommunications Services	)	

COMMENTS OF BENNET & BENNET, PLLC

Bennet & Bennet, PLLC ("Bennet & Bennet") hereby respectfully submits these comments in response to the *Notice of Proposed Rulemaking* ("*NPRM*") released by the Federal Communications Commission ("FCC" or "Commission") on March 18, 1998 in the above-captioned proceeding. Bennet & Bennet is a telecommunications law firm specializing in the representation of providers of wireless telecommunications services. Bennet & Bennet prepares, files and monitors applications for its clients using all forms currently employed by the Commission for the wireless radio services. Bennet & Bennet supports the Commission's effort to streamline its rules concerning applications and authorizations in the wireless radio services and applauds the advent of the Universal Licensing System ("ULS") as a means of simplifying and expediting the application process. However, the Commission can and should improve the proposed ULS by modifying certain of its proposals as set forth herein.

DISCUSSION

I. ELECTRONIC FILING AND NEW FORMS

A. The Five Proposed Forms Would Benefit From Modification

Bennet & Bennet applauds the Commission's proposal to consolidate the more than 40 wireless radio service forms into five new forms.[1] We agree that use of the five standardized forms will result in less confusion for applicants and believe that use of the new forms will enable applicants, especially those without legal counsel, to file more easily. However, the forms would benefit from certain modifications which would simplify the collection of information. The proposed FCC Form 602 is particularly illustrative in that regard.

In theory, FCC Form 602 may be helpful not only in standardizing the application process, but in eliminating the need for multiple filings. We have found that continually gathering, preparing and submitting ownership information each and every time an applicant files with the Commission is both a time-intensive and wasteful exercise. This is especially true in the context of an auction, where the Commission may already have the applicant's ownership information on file, but nonetheless requests detailed ownership information as part of "Exhibit A" of the FCC Form 175.

However, while a standardized ownership form may be a good idea in theory, the reality is that FCC Form 602 may prove to be unduly cumbersome. For example, in the case of a limited liability company with 20 members, an applicant currently could provide the ownership

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[1] *In re* Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Notice of Proposed Rulemaking*, WT Docket No. 98-20, FCC 98-25, ¶14 (rel. March 18, 1998) (*ULS NPRM*).

information for such a company in an ownership chart occupying two pages. Using proposed FCC Form 602 would require 20 pages to disclose the very same information.

In addition, the FCC Form 602 requests both more and less information than the Commission actually requires. To the extent that proposed FCC Form 602 was intended only to capture the direct and indirect ownership of the applicant, it does so. However, if the Commission intended that Form 602 capture *all* affiliate information as well, the form does not do so. FCC Form 602 is inadequate to capture an applicant's affiliate relationships, both horizontally, as well as vertically as required by § 1.2110(b)(4) of the Commission's rules. Although the form provides for the disclosure of *FCC-regulated businesses* (Item 12(a)), it does not provide for the disclosure of *non*-FCC regulated businesses that may be affiliated with the applicant as required by § 1.2110(b)(4) of the Commission's rules. Accordingly, to the extent that Form 602 is intended to capture all of the information required by § 1.2112 of the Commission's rules,[2] it should be modified. Additionally, the form is potentially inconsistent with the Commission's rules[3] to the extent that the form requests that applicants disclose *all* FCC-regulated businesses in which any disclosable interest holder has an ownership interest, rather than disclose only those entities in which a disclosable interest holder owns a 10 percent or greater interest.

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[2] 47 CFR § 1.2112.

[3] 47 CFR § 1.2110(b)(4); *See*, In the Matter of Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, *Third Report and Order and Second Further Notice of Proposed Rulemaking*, WT Docket No. 97-82, FCC 97-413, ¶ 75 (rel. Dec. 31,1997).

B. The Necessity of Implementing a "Time/Date Stamp"

All electronically-filed applications should bear a time and date stamp in order to provide applicants with documentary evidence that such applications have been filed in a timely manner. Currently, ULS provides only a file number as confirmation that the application has been submitted to the Commission. It is not clear from the file number alone when an application was filed or that it was timely filed.

C. The Commission Should Retain a Manual Filing Option

Filing wireless radio service applications via the ULS should be permissive, rather than mandatory. Computer problems are nondiscriminatory in whom they afflict, and rare is the person who has never experienced a computer problem that prevented use of the computer, at least for a short amount of time. For this reason, it is practical for the Commission to retain a manual filing option, which should not be restricted to certain services or classes of applicants. In addition, the Commission should maintain computer facilities at its field offices and at its Washington, D.C. offices for the public to use to file forms and pleadings electronically. When and if the commission moves to the Portals, the Commission should also provide at least 15 computers at a downtown location in the vicinity of the FCC's current offices to better afford public access to ULS.

D. Charging $2.30 Per-Minute is "Information Superhighway Robbery"

The Commission's proposal to set on-line fees at $2.30/minute[4] is both arbitrary and unsubstantiated, and seems exceedingly high given the efficiencies to be realized by use of the system. We agree with the Commission's proposal that "applicants [should] not be charged for on-line access to ULS while they are filing electronically,"[5] especially since applicants are already paying a fee simply for the *privilege* of filing with the Commission. However, the proposal does not go far enough in providing *affordable* access to certain basic information. The Commission should impose on large users only a small monthly fee for the retrieval of information via ULS, in addition to a *reasonable* usage-sensitive charge, whether hourly or by the minute. Alternatively, the FCC may want to consider offering several different payment options. A "menu" of ULS pricing plans may better serve the public, depending upon whether the user is a large law firm which uses the system often, or an individual member of the public who may use the system only once. If the Commission ultimately chooses to offer such a "menu," it will need to address how it will bill one-time users of the system. Additionally, regardless of the fee ultimately imposed for retrieving information via ULS, the FCC should continue to provide free access to the GULLFOSS system, which allows users to retrieve very basic information concerning wireless licensees at no cost. Furthermore, ULS should provide users with a confirmation screen which details the user's pricing plan and provides the option to change the plan or to back-out of the system before incurring any charges.

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[4] *ULS NPRM, supra* n.1, at n.5.

[5] *Id.* at n.4.

E. Manual Filers Should Not Be Required to Submit Multiple Copies of Applications or Pleadings

Bennet & Bennet supports the Commission's tentative decision to allow applicants that file electronically to refrain from filing paper copies, diskettes, or microfiche.[6] However, manual filers should be required to file *only* a diskette containing electronic copies of all attachments and exhibits filed with paper forms, rather than file numerous hard copies as is currently required. We agree that the filing of a diskette containing electronic copies of all attachments will expedite the addition of such applications to ULS.

II. STANDARDIZATION OF PRACTICES AND PROCEDURES FOR WTB APPLICATIONS AND AUTHORIZATIONS

A. The Automatic Cancellation of Licenses is Procedurally Unfair

While Bennet & Bennet fully supports the Commission's proposal to provide all wireless radio service licensees with automatic pre-expiration notifications,[7] elimination of the 30-day grace period for licensees to file "reinstatement" applications is procedurally unfair and may result in the loss of many licenses, notwithstanding the 30-day window to file a petition for reconsideration. For instance, Private Land Mobile licensees, which are currently permitted a 30-day grace period, often are small companies, many of which may not be familiar with the Commission's procedures concerning license renewals. Further, many may be without counsel to assist them with their filings and may need an additional 30 days simply to obtain counsel,

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[6] *Id.* at ¶ 25.

[7] *Id.* at ¶ 56.

despite the 90-day advanced notification. Accordingly, the Commission should provide wireless radio service licensees that do not file a timely renewal application a 30-day grace period in which to request reinstatement.

B. ULS Should Provide Licensees with 120-Days Notice of Construction and Coverage Deadlines

Licensees should be given 120-days advance notice of an approaching construction or coverage deadline. Such advance notice should be sufficient to allow licensees to finalize any last-minute business matters or permit licensees to file for an extension of time.

C. It is Unnecessary and Unjust to Require Applicants to Disclose Individual Interest Holders' TINs

In order to comply with the Debt Collection Improvement Act of 1996 (DCIA),[8] the Commission has proposed that applicants submit the Taxpayer Identification Number (TIN) of each of the applicant's disclosable interest holders.[9] Such a request is not only unduly burdensome and unnecessary, but also may be used to unfairly deprive an applicant of monies owed to it by the federal government. For example, if an entity holding a 10 percent interest in the applicant is indebted to the federal government by way of non-payment of a non-tax debt, will the applicant's funds be withheld until such time as the interest holder makes good on its debt? Surely the applicant should not be punished for the fiscal irresponsibility of a single

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[8] Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. Law No. 104-134, § 3001, 110 Stat 1321, 1321-358 -- 1321-381 (1996) (DCIA).

[9] *See, e.g.* FCC Form 602, Item 4.

minority interest holder. Indeed, one of the express purposes of the DCIA is to "ensure . . . all appropriate due process rights" concerning the collection of debts.[10] Thus, fundamental fairness dictates that a result such as the one expressed herein should not be allowed to occur.

Moreover, although § 7701 of Title 31 has been amended to "require each *person doing business with [the] agency* to furnish that agency such person's taxpayer identification number",[11] an individual holding a 10 percent minority interest in an FCC applicant or licensee should not be considered to be *"doing business with the agency"* for the purposes of collecting debts for the federal treasury.[12] The statute states, in pertinent part, that "a person shall be considered doing business with a Federal agency if the person is . . . an applicant for, or recipient of, a Federal license, permit, right of way, grant, or benefit payment administered by the agency . . . ."[13] The statute at issue defines a ***"person** doing business"* as an "applicant." In the example of the minority interest holder described herein, clearly it is the applicant or licensee *as a whole* that is directly engaged in doing business with the Commission, rather than the individual interest holder. Additionally, while § 1.2105(c)(6) of the Commission's rules broadly defines the term "applicant," it does so only in the context of the prohibition of collusion, not for the purposes of "doing business" with the Commission.[14] Accordingly, the Commission should

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[10] DCIA, *supra* n.8, at § 3001(b)(5).

[11] *Id.* at § 3001(i)(1)(amending 31 U.S.C. 7701(c)(1)).

[12] *Id.* (amending 31 U.S.C. 7701(c)(2)).

[13] *Id.*

[14] 47 CFR 1.2105(i) defines an applicant as "the entity submitting a short-form application . . . as well as all holders of partnership or other ownership interests and any stock interest amounting to 10 percent or more . . . ."

require only the disclosure of the *applicant's* TIN, rather than the TIN of each entity or individual holding an interest in that applicant. In the alternative, the Commission should require only *controlling* interest holders to disclose their TINs.

D. The FCC Must Take Extreme Precautions to Ensure the Protection of TINs

We are also very concerned about the potential for access to and misuse of TINs. The Commission's proposal calls for individuals to use their Social Security Number ("SSN") as their TIN.[15] Of particular concern is the ubiquity with which SSNs are used as an individual's unique identifier. With the explosion of the Internet and the ease with which an ordinary person possessing a computer can now gain access to sensitive personal data, the potential for access to and misuse of one's SSN is great. It is with increasing frequency that we are hearing about the crime of "identity theft." Indeed, an individual's SSN is a powerful tool. Despite the existing tax code's reliance on SSNs, the Commission should refrain from relying on SSNs as an individual's sole identifier. Further, it should take precautions to ensure that, if used, an individual's SSN is secure from abuse. We urge the Commission to give great weight to the privacy concerns at issue when balancing those concerns against the need for disclosure of such information. Specifically, we propose that the Commission initiate a plan whereby SSNs will be "locked-up," and individuals will have the option of replacing their SSN as the "default" identifier with a unique identifier of either their own choosing, or one supplied by the Commission.

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[15] *ULS NPRM*, *supra* n. 1, at ¶ 73.

CONCLUSION

Bennet & Bennet commends the Commission for its efforts to bring the licensing process into the 21st century. The Universal Licensing System will have a profound impact upon the way licensees interact with the Commission. By streamlining the application process and providing for electronic filing, the Commission has simplified and de-mystified what historically has been an inefficient and duplicative process. However, despite our general support for the proposals set forth in the *NPRM*, we believe that some changes are needed in order to make the licensing process equitable to all concerned and to provide reasonable public access to ULS. For the foregoing reasons, Bennet & Bennet requests that the Commission consider the suggestions made herein.

Respectfully submitted,

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